

2009 DRAFTING REQUEST

Bill

Received: **11/20/2008**

Received By: **gmalaise**

Wanted: **As time permits**

Identical to LRB:

For: **Administration-Budget**

By/Representing: **Stinebrink**

This file may be shown to any legislator: **NO**

Drafter: **gmalaise**

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Subject: **Children - out-of-home placement**

Extra Copies:

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Pre Topic:

DOA:.....Stinebrink, BB0229 -

Topic:

Child welfare provider rate regulation

Instructions:

See attached--permit DCF to regulate group home and residential care center rates and the administrative portion of treatment foster home rates

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	gmalaise 11/26/2008	jdye 12/02/2008					S&L
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<END>

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2009-11 Budget Bill Statutory Language Drafting Request

- Topic: Child Welfare Provider Rate Regulation
- Tracking Code: BBO 229
- SBO team: Education, Children & Families
- SBO analyst: Cory Stinebrink
 - Phone: 266-8219
 - Email: Cory.Stinebrink@Wisconsin.gov
- Agency acronym: DCF
- Agency number: 437
- Priority (Low, Medium, High): High

Intent:

The intent of this request is to allow the Department of Children and Families, Division of Safety and Permanence, statutory authority to regulate Group Home and Residential Care Center rates and the administrative portion of Treatment Foster Care rates.

Under current state law, Treatment Foster Care agencies (TFCs), Group Homes (GHs) and Residential Care Centers (RCCs) can set their own rates for what child welfare agencies are charged for placements. There is no consistency in what private providers charge for placements or correlation between the cost and the quality of care. GHs charge anywhere from \$106.73 to \$335.01 per day and RCCs charge from \$195.00 to \$855.36. TFCs (child placing agencies) set their own administrative rates, which can be as much as the maintenance payment to the TFC foster parent. The lack of control over provider rates is a major concern for the State. The Department (Bureau of Milwaukee Child welfare and State Foster Care Program) and counties may be paying two very different rates for essentially the same service. GH and RCC rates have also increased significant in recent years, creating budget problems for child welfare agencies.

DEPARTMENT OF CHILDREN AND FAMILIES
2009-11 Biennial Budget
Governor's Budget Issue Paper

Issue: Child Welfare Provider Rate Regulation

Problem Description

Under current state law, Treatment Foster Care agencies (TFCs), Group Homes (GHs) and Residential Care Centers (RCCs) can set their own rates for what child welfare agencies are charged for placements. There is no consistency in what private providers charge for placements or correlation between the cost and the quality of care. GHs charge anywhere from \$106.73 to \$335.01 per day and RCCs charge from \$195.00 to \$855.36. TFCs (child placing agencies) set their own administrative rates, which can be as much as the maintenance payment to the TFC foster parent. The lack of control over provider rates is a major concern for the State. The Department (Bureau of Milwaukee Child welfare and State Foster Care Program) and counties may be paying two very different rates for essentially the same service. GH and RCC rates have also increased significant in recent years, creating budget problems for child welfare agencies.

There are two options to address this problem: 1) changing statute to establish state regulation of the provider rate setting process, or 2) change statute regarding the threshold percentage for regulated rates so the state and counties can better negotiate rates with providers.

Background

Wisconsin currently does not regulate rates charged by Group Homes (GHs) and Residential Care Centers (RCCs). GHs and RCCs are required to establish statewide rates that must be based on actual costs with an allowance for the provider's reserves/profit. The Department publishes GH and RCC rates and reviews audit reports to determine if rates must be adjusted based on actual costs. Should adjustments be necessary, GHs and RCCs must make refunds to the child welfare agencies that paid for placements. While rates must be cost based, there are no restrictions on the amount of cost included in the rate and no review of whether costs are appropriate. Providers also have no incentive to control costs.

Over the last ten years, the average (median) RCC rate has increased from \$171/day to \$274/day, a cumulative increase of 60% with annual rate increases ranging from 2% to 10%. The average GH rate has increased from \$113/day to \$185/day, a cumulative increase of 64% with annual increases ranging from 4% to 9%.

Current statutes (See Appendix A) allow child welfare agencies to purchase 75% of the beds in a facility to negotiate a specific rate. Otherwise the provider rate must be charged statewide to all purchasers. Some RCCs offer multiple levels of service, with a different rate for each level.

The issue of GH and RCC providers setting their own rates has become a problem in that there is no control over what providers are being paid by the state and counties. There is no set standard for payment of services provided to children based on the level of service or qualifications of the

provider. Essentially the providers are controlled only by the free market and can charge whatever rates the placement market will bear. GHs and RCCs may charge two totally different rates for essentially the same services and the state has no control over the rate setting process.

Rate Regulation in Other States

Surrounding states were contacted regarding their procedures for provider rate regulation with the following results:

Minnesota: Minnesota allows each of their 82 counties and 11 tribes to negotiate a rate with a private provider. Once that rate has been set in a particular county, other counties may use the negotiated rate to pay a provider.

Illinois: The state of Illinois negotiates a rate with each private provider for group home and child caring institution placements. Cost reporting and historical costs are used in determining the rates. Also, Illinois requires all private providers be accredited by the Council of Accreditation (COA) and Illinois will reimburse the costs of being accredited to the providers.

Iowa: Historically, prior to 1996, rates for foster group care services were determined through annual financial & statistical reporting by the providers. There were specified rules for cost allocation, expenses that were not allowed, and costs subject to limits. Rates were established based on a calculation of a cost per unit by applying effective utilization standards (as required for federal funding). The administrative rules requiring financial & statistical reports have been held in abeyance since July 1, 1996.

In state fiscal year 1997, the department determined weighted average rates for all rehabilitative treatment and supportive services, including foster group care. The formula for calculation of the weighted average rate was computed by multiplying the rate for each similar service in effect as of 7/1/96, by the number of units of each service provided to department clients. The products were totaled and divided by the total number of units provided to department clients as reported on the most recent financial & statistical reports on which prior rates were established. All financial & statistical reports were annualized to provide equitable consideration of all provider rates. These new weighted average rates received a one-time 2% index increase and became effective on 7/1/97; there have been no adjustments to the weighted average rates since 7/1/97.

For rates effective after January 1, 1998, the department negotiates payment rates with each provider. The negotiated rates are based upon the historical and future reasonable and necessary cost of providing the service, other payment-related factors, and the availability of funding.

Adjustment of the rate through negotiation can only be based on the following factors:

- Changes in the Consumer Price Index for all Urban Consumers (CPI-U). Any adjustment based on changes in the CPI-U can not exceed the CPI-U increase as of 12/31 in the previous year.
- Changes in a provider's allowable costs based on actual cost data or documented projections of costs.
- Changes in program utilization that impact the per-unit cost of a program. This also requires a minimum utilization factor of 80%.

- Changes in the department's expectations of where a service must be delivered.
- Changes proposed by a provider and agreed to by the department of where a service must be delivered.
- Loss of a grant by a provider when the grant amount had previously been used to offset expenses, which resulted in lower established rates.
- Changes in state or federal laws, rules, or regulations that result in a change in the costs attributable to the services, including minimum wage adjustments.
- Competitive factors between providers.
- Department funding availability.

It is important to note, these factors do not necessarily equate only to rate increases; some factors may justify rate reductions.

The starting point for all rate negotiations for existing providers on 1/1/98 was the rate in effect on 12/31/97. For providers establishing a new rate for new services on or after 1/1/98, the new rate is negotiated based on the starting rate of the 7/1/97 weighted average rate. The Iowa department is not obligated to negotiate rates beyond the established weighted average rates. By rule, once a negotiated rate is established, it cannot be changed or renegotiated.

Negotiated rates for established providers can be increased if funds are legislatively appropriated for an across-the-board rate increase; they can only be decreased due to legislated across-the-board rate decreases. Since 1998, the rates have been increased through legislated across-the-board rate increases 5 times, for a total of 15%; there have been no legislated rate reductions.

Indiana: Indiana currently uses a similar practice as Wisconsin. Indiana grants a master contract with each provider for 4 years. The rate of the contract is set by the provider, but the provider does have to submit cost justification as to their rate. Each year the rates for each provider are reviewed and providers must submit justification if their rate is to increase. The rates must be based on the different services and regions of the state. Indiana intends to change their practice for rate setting in the next year. Indiana is examining all options as to how to change their current practice of letting the providers set the rates.

The lack of regulation of provider rates has led to provider rate increases that exceed the rate of inflation and the placement cost increases have strained budgets at the state and county level. In particular, provider rate increases have contributed to a large out-of-home care budget deficit in the Bureau of Milwaukee Child Welfare.

There is no consistency in which the private providers are charging the state or counties. The state is paying a wide range of rates for the same services. The state could save money if there is a formula set for private providers so that the state is paying the same rate for the same service.

Proposal

Seek statutory change to give the Division of Safety and Permanence (DSP) authority to regulate GH and RCC rates and the administrative portion of TFC rates.

Under this option, DCF would commission an actuarial study to review provide rates during CY 2010 and implement rate regulation starting in CY 2011. Provider rates would be frozen in CY 2010 at the CY 2009 level pending completion of the study. The actuarial study would be used to establish parameters for providers to document costs and establish benchmarks for different levels of care. Providers would have to justify their rates against the benchmarks to justify rate increases. Providers rates that exceed the benchmarks would be frozen until the providers reach the benchmarks.

Implementing the provider rate regulation would require the creation of a rate regulation unit within the Division of Safety and Permanence. The rate unit would be attached to the Child Welfare Licensing Section so that the rate reviewers could work in conjunction with the licensing staff to review provider rate proposals. The rate unit would audit providers and approve rate requests to ensure that the rates are appropriate for the level of service being provided. The rate unit would require four (4) additional staff or contractors to manage the rate review and approval process, including one rate review program coordinator (state staff), 2 auditors (possibly contractors), and a support position (state staff).

Pros:

- The state would have consistency in what is paid to each provider.
- The rate could be set so that each provider would be paid consistently for basic care items like food and clothing; school registration allowance and school supplies; and housing/board component.
- Additional rates would be added for each additional service like AODA counseling, medical needs, behavioral needs and psychotherapy.
- Regulating rates would encourage providers to become more specialized due to the specific service that they will be providing.
- The state would only be paying for a specific service that is required for a child in order to meet the needs of the child.
- There would be consistency in the way the state pays each provider and the state would pay the same amount per service per provider.

Cons:

- Private providers have been setting their own rates for years and this is a major change in policy. DCF could encounter significant opposition from the provider community.
- Some providers might not continue to operate if their rates decrease or are not increased in future years.
- Regulating provider rates would require DCF to create provider regulation capacity. DCF would need auditor staff to review provider rate proposals and conduct on-site audits of providers.
- Rate setting procedures could become complicated to administer, similar to the Iowa experience.

Actions Necessary

- Statutory change to give DCF authority to regulate provider rates and to issue administrative rules to specify the rate setting process.

- Create four (4) positions to manage the regulatory process- rate coordinator, two (2) auditors and clerical support position. It possible that the auditor positions could be contracted.
- Provider rates would be frozen during CY 2010 pending completion of the actuarial study and rate regulation would begin in CY 2011, with provider rate applications due in Fall 2010.

Fiscal Effect

The cost for the actuarial study is estimated at approximately \$250,000, although the exact cost would be depending on the results of an RFP process to select a vendor for the study. The study would be initiated in SFY 2010 with results completed in SFY 2011.

The professional positions would cost approximately \$80,000 annually for salary, fringe, DCF charges, travel and supplies and services. The clerical support position would cost approximately \$80,000 annually.

The costs for the actuarial study and position would be partially IV-E reimbursable at approximately 21%.

Regulation of provider rates would begin to show an impact for placement costs in CY 2010 due to the rate freeze and a more noticeable impact in CY 2011 once rate regulation went into effect. It is difficult to project the cost savings from provider rate regulation, but if GH and RCC rate increase are limited to the inflation rate, the savings to the Bureau of Milwaukee Child Welfare and State Foster Care Program would be substantial.

Counties would also realize significant cost savings, which would allow counties to focus their limited resources on supporting county staff and services to families.

Fiscal Effect Summary:

	SFY 2010	SFY 2011
Actuarial Study	\$150,000	\$100,000
Rate Coordinator (start 10/1/09)	60,000	80,000
2 Auditors (start 7/1/10)		160,000
Clerical Support (start 7/1/10)		60,000
Total Cost	\$210,000	\$400,000
GPR (79%)	\$165,900	\$316,000
IV-E (21%)	\$44,100	\$84,000

Appendix A

The following are the statutes regarding rates for residential care centers and group homes:

49.343 Rates for residential care centers and group homes.

(1) Subject to sub. (1m), each residential care center for children and youth, as defined in s. 48.02 (15d), and each group home, as defined in s. 48.02 (7), that is incorporated under ch. 180, 181, 185, or 193 shall establish a per client rate for its services and shall charge all purchasers the same rate.

(1m) Notwithstanding sub. (1), the department, a county department under s. 46.215, 46.22, 46.23, 51.42, or 51.437, a group of those county departments, or the department and one or more of those county departments, and a residential care center for children and youth or group home, as described in sub. (1), may negotiate a per client rate for the services of that residential care center for children and youth or group home, if the department, that county department, the county departments in that group of county departments, or the department and one or more of those county departments, agree to place 75% or more of the residents of that residential care center for children and youth or group home during the period for which that rate is effective. A residential care center for children and youth or group home that negotiates a per client rate under this subsection shall charge that rate to all purchasers of its services.

(2) A residential care center for children and youth or a group home, as described in sub. (1) or (1m), shall submit to the department the rate it charges and any change in that rate before a charge is made to any purchaser. The department shall provide forms and instructions for the submission of rates and changes in rates under this subsection and a residential care center for children and youth or a group home that is required to submit a rate or a change in a rate under this subsection shall submit that rate or change in a rate using those forms and instructions.

(3) The department may require an audit of any residential care center for children and youth or group home, as described in sub. (1) or (1m), for the purpose of collecting federal funds.

Document 1 of 1**Source:**

Iowa Administrative Rules | Iowa Administrative Code | Human Services Department [441] | Chapter 185
REHABILITATIVE TREATMENT SERVICES | 441 — 185.112 (234) Determination of rates.

441—185.112(234) Determination of rates. Rules 441—185.102(234) to 441—185.107(234), 185.109(234) and 185.110(234) shall be held in abeyance for purposes of establishing rates effective January 1, 1998, unless otherwise provided for in these rules. Rates for a service to be effective on or after February 1, 1998, shall be established based on the payment rate negotiated between the provider and the department. This negotiated rate shall be based upon the historical and future reasonable and necessary cost of providing that service, other payment-related factors and availability of funding. Negotiated rates may be increased without negotiation if funds are appropriated for an across-the-board increase. A rate in effect as of December 31, 1997, shall continue in effect until a negotiated rate is established in accordance with the requirements of subrules 185.112(1) to 185.112(3), 185.112(6), or 185.112(12), or a rate is established in accordance with subrule 185.112(14), or until the service is terminated in accordance with subrule 185.112(4).

185.112(1) Negotiation of rates. Rates for services to be made effective on or after February 1, 1998, must be established in accordance with this subrule except as provided for at subrule 185.112(12) or 185.112(14).

a. On or after January 1, 1998, the department shall begin negotiating payment rates with providers of rehabilitative treatment and supportive services to be effective for services provided on or after February 1, 1998.

b. The scope of these negotiations is limited solely to the rate to be paid for each service.

(1) No other items, such as, but not limited to, changes in staff qualifications, service definition, required components, allowable costs or any licensing, certification or any contract requirement can be the subject of negotiations or used as a basis for changing rates except as provided for at subparagraph 185.112(1)“f”(7).

(2) The initial negotiation of rates pursuant to rule 441—185.112(234) shall encompass all of the services in the existing rehabilitative treatment and supportive services contract.

c. The service area manager of the host area is responsible for the negotiation of rates for each provider whose contract for rehabilitative treatment and supportive services is administered by the host area, regardless of where services are provided.

(1) The host area shall take into consideration the other service areas served by a provider when negotiating a rate for a service provided in multiple service areas.

(2) When a service is provided only in a nonhost area, the two service area managers shall determine which service area will negotiate the rate for that service.

d. The service area manager of the host area and the provider are mutually responsible for initiating the rate negotiation process. Negotiations should begin no later than May 1, 1998. Negotiations may be conducted in a manner acceptable to both parties but shall be conducted face to face upon the request of either party.

e. The provider must disclose any and all relevant subcontractual and related party relationships related to the provision of rehabilitative treatment or supportive services at the initiation of the rate negotiation process.

(1) This disclosure shall include all current and any proposed subcontracts that relate to the direct provision of rehabilitative treatment or supportive services for which rates are being negotiated. The provider shall make a written statement disclosing any current or proposed subcontracts that may relate to the rehabilitative treatment and supportive services for which rates are being negotiated.

(2) This disclosure shall include all transactions with related parties as defined at paragraph 185.105(11)“c” or 441—subrule 152.2(18) that may relate to the rehabilitative treatment and supportive services for which rates are being negotiated. The provider shall make a written statement disclosing any current related party transactions that may relate to the rehabilitative treatment and

supportive services for which rates are being negotiated. This disclosure is only required when either the department or the provider seeks to establish a rate different than the rate used as the starting point for rate negotiations.

(3) Failure by a provider to comply with these requirements shall be considered a violation in accordance with subrule 185.12(6) and may result in sanctions being imposed or the withholding of payments.

f. For those services with a nonzero payment rate in effect on December 31, 1997, the rate in effect on December 31, 1997, shall be used as the starting point for rate negotiations. For rates to be effective on or after February 1, 1998, the department and the provider by mutual written agreement may either leave the rate in effect as of December 31, 1997, at its current level or they may raise or lower the rate in effect as of December 31, 1997. Adjustment of the rate in effect as of December 31, 1997, shall be based on the following factors:

(1) Changes in the Consumer Price Index for all Urban Consumers (CPI-U). Any adjustment based on changes in the CPI-U shall not exceed the amount by which the CPI-U increased during the previous calendar year.

(2) Changes in a provider's allowable costs based on current actual cost data or documented projections of cost. Allowable costs are those costs not excluded pursuant to rule 441—185.104(234).

(3) Changes in program utilization that impact the per unit cost of a program. Rates shall not be adjusted based on utilization levels that are below the minimum effective utilization of 80 percent or actual (whichever is higher) of the licensed or staffed capacity (whichever is less) of the program. If actual utilization is used as a basis for adjusting a rate, the actual effective utilization for the 12-month period immediately preceding the initiation of rate negotiations shall be used.

(4) Changes in the department's expectations of where a service must be delivered.

(5) Changes proposed by a provider and agreed to by the department of where a service must be delivered.

(6) Loss of a grant by a provider when the grant amount had previously been used to offset expenses which had resulted in a lower rate for rehabilitative treatment and supportive services.

(7) Changes in state or federal laws, rules or regulations that result in a change in the costs attributable to the services in question, including minimum wage adjustments.

(8) Competitive factors between providers.

(9) Department funding availability.

g. Existing providers who currently have a contract to provide a service where the payment rate has been established at zero prior to January 1, 1998, may use the weighted average rate established pursuant to paragraph 185.112(2) "c" for that service in lieu of their existing rate as the starting point for negotiations unless they have a nonzero rate for a similar service. If a provider has a nonzero rate for a similar service, the starting point for rate negotiations shall be established pursuant to paragraph 185.112(2) "a" or "b."

h. Negotiated rates are subject to the following additional limitations.

(1) For public agencies, profit or other increment above cost is not allowed (see subrule 185.112(5)). For private entities there is no provision for or prohibition of profit in these rules.

(2) Rates for cotherapy services continue to be subject to the limitations specified at subparagraph 185.106(4) "c"(2).

(3) Rates shall not exceed any rate ceiling established or authorized by the legislature.

(4) Rates to be paid may not exceed the limits established by 441—subrule 152.2(17).

i. The basis for any and all changes from the rate used as the starting point for negotiations shall be documented. A copy of all documentation shall be attached to the Rehabilitative Treatment and Supportive Services Negotiated Rate Establishment Amendment, Form 470-3404, when it is submitted to the bureau of purchased services for implementation.

j. Only the service area manager of the host area may approve the rates negotiated for a provider.

(1) This approval shall be based upon the historical cost basis used for establishing those rates and the documented factors justifying variation from those historical costs.

1. Payment rates in effect as of December 31, 1997, shall be considered to be sufficiently documented and no justification is required for continuing a rate in effect as of December 31,

1997.

2. Payment rates set at the weighted average rate for a service shall be considered to be sufficiently documented and no justification is required for establishing or maintaining a rate at the weighted average level.

(2) After both the provider and the service area manager of the host area have signed the Rehabilitative Treatment and Supportive Services Negotiated Rate Establishment Amendment, Form 470-3404, it shall be submitted to the bureau of purchased services along with the written disclosure required at paragraph 185.112(1)“e” and any necessary documentation to support changes in the rate from the historical cost base as required by paragraph 185.112(1)“h.”

(3) The effective date of the rate for a new service shall be the effective date of a new contract or the effective date of the contract amendment adding that new service to an existing contract unless a later effective date is agreed to by both parties.

(4) The effective date of the rate for an existing service shall be the first of the month following the month in which the Rehabilitative Treatment and Supportive Services Negotiated Rate Establishment Amendment, Form 470-3404, and all necessary supportive documentation and disclosures are received by the bureau of purchased services by the fifteenth of the month.

k. Once a negotiated rate is established based on the provisions of this subrule, it shall not be changed or renegotiated during the period of this rule except in the following circumstances:

(1) By mutual consent of the provider and the service area manager of the host area based upon the factors delineated at paragraph 185.112(1)“f,” except that rates shall not be changed or renegotiated for the period of July 1, 2000, through June 30, 2009.

(2) In accordance with paragraph 185.112(6)“b,” except that rates shall not be changed or renegotiated for services not assumed by a new provider for the period of July 1, 2000, through June 30, 2009.

(3) Rates may be changed when funds are appropriated for an across-the-board increase. A 1percent cost-of-living adjustment will be applied to those rates in effect as of June 30, 2008.

185.112(2) New services. When a new provider contracts to provide a rehabilitative treatment or supportive service or an existing provider adds a new rehabilitative treatment or supportive service on or after January 1, 1998, the rate for the new service shall be established based on a payment rate negotiated in accordance with subrule 185.112(1) using the weighted average rate for that service in lieu of an existing rate as the starting point for negotiations.

a. If an existing provider already has a rate for a similar service and wishes to establish a second rate for that service, the starting point for rate negotiations for the second rate shall be the starting point used in negotiations for the provider’s already established rate for that similar service.

b. If an existing provider has more than one rate for a similar service and wishes to establish an additional rate for that service, the starting point for rate negotiations shall be established by the service area manager of the host area and shall be one of the following: the starting point of that provider’s established rate for the similar service most closely resembling the proposed service, or the simple average of the starting points of all of the provider’s established rates for similar services.

c. The weighted average rate is the weighted average rate for each service as of July 1, 1997, as previously established in accordance with subrule 185.109(1).

d. For those services where no weighted average rate has been established because there are less than four rates existing for that service or for newly developed rehabilitative treatment and supportive services, the department shall determine the cost of that service by requiring financial and statistical reports reflecting the costs for the new service to be submitted in accordance with rules 441—185.102(234) to 441—185.107(234). Initial projected rates established in accordance with this subrule shall become effective in accordance with subrule 185.107(2).

The report of actual costs pursuant to paragraph 185.103(1)“b” shall be used only to establish the historical costs of the new service which shall be used as the starting point in the rate negotiation process. The negotiated rate established in accordance with subrule 185.112(1) based upon the actual cost report shall become effective in accordance with paragraph 185.112(1)“j.”

185.112(3) Rate resolution process. The rate resolution process may be used when the department and a provider are unable to agree upon a rate for a service within 60 days of initiating rate

negotiations.

- a. This process involves obtaining an independent mediator who is agreeable to both parties.
- b. The cost of the mediator shall be borne equally by the provider and the department. Neither party to the mediation shall be liable for paying for more than that party's share of the cost for eight hours of mediation unless this is mutually agreed upon prior to initiation of the mediation process.
- c. The rate resolution process must be concluded within 60 days of its initiation.
- d. The mediator shall not make rate-setting decisions. The role of the mediator is to facilitate discussions between the parties in an effort to help the parties reach a mutual agreement.

185.112(4) *Failure to reach agreement on rates.* In the event the department and the provider are unable to reach agreement on a rate, the following procedures apply:

a. If the department and an existing provider are unable to reach agreement on a negotiated rate for an existing service with a published rate within 60 days of initiating negotiations or by June 30, 1998, whichever comes first, the rate resolution process may be used.

(1) Whether or not the rate resolution process is used, if agreement is not reached by September 30, 1998, the service shall be deleted from the provider's rehabilitative treatment and supportive services contract no later than November 30, 1998.

(2) If agreement is reached, the rate shall become effective in accordance with the provisions of paragraph 185.112(1) "i."

b. In the event the department and an existing provider are unable to reach agreement on a rate for a new service or an existing service without a published rate within 60 days of initiating rate negotiations, the rate resolution process may be used.

(1) If the rate resolution process is not used, and agreement is not reached within 120 days of initiating negotiations, no rate shall be established.

1. For new services, any contract amendment associated with that rate shall be denied.
2. For existing services without a rate, the contract shall be amended to delete this service from the contract.

(2) If the rate resolution process is used and no rate is agreed upon within 60 days of referral to the rate resolution process, no rate shall be established.

1. For new services, any contract amendment associated with that rate shall be denied.
2. For existing services without a rate, the contract shall be amended to delete this service from the contract.
3. If agreement is reached within the required time frames in either of the above situations, the rate shall become effective in accordance with the provisions of paragraph 185.112(1) "i."

c. In the event the department and a new provider are unable to reach agreement on a rate for a service within 60 days of initiating rate negotiations, the rate resolution process may be used. If no rate is agreed upon within 60 days of initiation of the rate resolution process, no rate shall be established and the services in question shall not be a part of any approved contract for rehabilitative treatment and supportive services. In the event that the department and a new provider cannot reach agreement on any rates, the contract shall be denied.

d. In all cases, a service for which a negotiated rate has not been established in accordance with subrule 185.112(1), except as provided for at subrule 185.112(12), on or before September 30, 1998, shall be terminated from the provider's contract for rehabilitative treatment and supportive services no later than November 30, 1998.

e. The department shall not be liable for payment for any rehabilitative treatment or supportive service that does not have a rate established in accordance with subrule 185.112(1), except as provided for at subrule 185.112(12), that is provided after November 30, 1998.

185.112(5) *Public agencies.* Public agencies shall be required to demonstrate their compliance with paragraph 185.106(3) "d."

185.112(6) *Interruptions in a program.*

a. If a provider assumes the delivery of a program from a related party provider as defined at paragraph 185.105(11) "c" or 441—subrule 152.2(18), the rate for the new provider shall remain the same as the rate established for the former provider. The rate for the new provider shall also remain the same as for the former provider if the difference between the former and the new provider is a

change in name or a change in the legal form of ownership (i.e., a change from sole proprietorship to corporation).

b. Except as provided in paragraph "a" above, when a new provider assumes the delivery of a program from another provider, all rates for the services previously provided by either provider shall need to be reviewed and may be renegotiated at the request of either party.

c. If a provider ceases to contract for and provide a service or program on or after July 1, 1996, and prior to establishing a negotiated rate in accordance with subrule 185.112(1), decides to again contract for and provide that program or service, the nonzero rate in effect when the contract ceased shall be used as a starting point in negotiating a new rate in accordance with subrule 185.112(1) for that service.

d. If an existing provider ceases to contract for and provide a service or program for which a zero rate has been established, and decides to again contract for and provide that program or service, the rate shall be established in accordance with subrule 185.112(2) and the starting point for negotiations shall be the weighted average rate.

e. If a provider ceases to contract for and provide a service or program after a rate has been established in accordance with subrule 185.112(1) and decides to again contract for and provide that program or service, the rate shall be established at the rate in effect when service was interrupted.

f. Rates for services interrupted prior to July 1, 1996, shall be treated as a new service in accordance with subrule 185.112(2).

185.112(7) Maintenance of fiscal records. Subrules 185.102(1) to 185.102(3), rule 441—185.104(234), subrules 185.105(11) and 185.106(1), paragraph 185.106(3) "d," and subrule 185.106(4) shall be used as the basis for maintenance of fiscal records.

185.112(8) Certified audits. Certified audits shall be conducted and the reports submitted to the department as set forth in subrule 185.102(4).

185.112(9) Billing. Subrule 185.106(4) remains in effect for billing purposes.

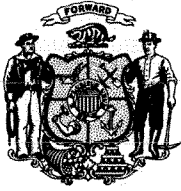
185.112(10) Rates for services provided on or after July 1, 2000. Rescinded IAB 12/1/99, effective 2/1/00.

185.112(11) Liability for payment. The department shall not be liable for payment for any programs or services prior to the contract effective date or the effective date for the rate for the program or service.

185.112(12) Providers under an exception to policy for establishing rates. When a provider has been granted an exception to rules 441—185.102(234) to 441—185.107(234) or 441—185.109(234) by the director of the department prior to January 1, 1998, the exception shall continue in effect as written for any provider not located in the state of Iowa and for which the exception was based upon another state's requirement that providers be paid the same rate they are paid for clients from the provider's home state. The exceptions for all other providers shall terminate and the conditions leading to the exceptions being approved shall be considered in the rate establishment negotiations.

185.112(13) Review of rate negotiations. Rate negotiations are considered rate determinations and shall be handled in accordance with the provisions for rate determinations at rule 441—152.3(234). Requests for review of rate determinations shall be granted only if the rate resolution process as defined at subrule 185.112(3) has been used.

185.112(14) Establishment of statewide fixed rates. Rescinded IAB 7/2/08, effective 7/1/08.



State of Wisconsin
2009 - 2010 LEGISLATURE

LRB-0883/?

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IN 11/26

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DOA:.....Stinebrink, BB0229 - Child welfare provider rate regulation

FOR 2009-11 BUDGET -- NOT READY FOR INTRODUCTION

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AN ACT ...; relating to: the budget.

Analysis by the Legislative Reference Bureau

HEALTH AND HUMAN SERVICES

CHILDREN

Under current law, a residential care center for children and youth (residential care center) and a group home must establish a per client rate for its services and must submit to DCF that rate and any change in that rate before a charge is made to any purchaser of those services.

This bill requires DCF to establish the per client rate that a residential care center or a group home may charge for its services, and the per client administrative rate that a child welfare agency may charge for the administrative portion of its treatment foster care services, for services provided beginning on January 1, 2011. The bill also freezes for 2010 at the 2009 level the per client rate that a residential care center or a group home may charge for its services and the per client administrative rate that a child welfare agency may charge for the administrative portion of its treatment foster care services. The bill defines "administrative rate" as the difference between the rate charged by a child welfare agency to a purchaser of treatment foster care services and the rate paid by the child welfare agency to a treatment foster parent for the care and maintenance of a child.

Under the bill, by October 1 annually, a residential care center or a group home must submit to DCF the per client rate that it proposes to charge for services provided in the next year and a child welfare agency must submit to DCF the

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*
proposed per client administrative rate that it proposes to charge for treatment foster care services provided in the next year. DCF must then review the proposed rate and audit the residential care center, group home, or child welfare agency to determine whether the proposed rate is appropriate to the level of services to be provided; the qualifications of the residential care center, group home, or child welfare agency to provide those services; and the reasonable and necessary costs of providing those services.

In reviewing a proposed rate, DCF must consider certain factors, including: 1) changes in the consumer price index; 2) changes in allowable costs based on current actual cost data or documented projections of costs; 3) changes in program utilization that affect the per client rate or per client administrative rate; 4) changes in DCF's expectations relating to service delivery; 5) changes in service delivery proposed by the residential care center, group home, or child welfare agency and agreed to by DCF; 6) the loss of any source of revenue that had been used to pay expenses; 7) changes in any state or federal laws, rules, or regulations that result in any change in the cost of providing services, including any changes in the minimum wage; 8) competitive factors; 9) the availability of funding to pay for the services to be provided under the proposed rate; and 10) any other factor relevant to the setting of a rate that DCF may determine by rule promulgated under the bill.

If DCF determines that a proposed rate is appropriate, DCF must approve the proposed rate. If DCF does not approve a proposed rate, DCF must negotiate with the residential care center, group home, or child welfare agency to determine an agreed to rate. If after negotiations a rate is not agreed to, the parties must engage in mediation to arrive at an agreed to rate. If after mediation a rate is not agreed to, the residential care center, group home, or child welfare agency may not provide the service for which the rate was proposed.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 SECTION 1. 49.343 (title) of the statutes is amended to read:

2 49.343 (title) **Rates for residential care centers and, group homes, and**
3 **child welfare agencies.**

History: 2007 a. 20 s. 830; Stats. 2007 s. 49.343.

4 SECTION 2. 49.343 (1) of the statutes is renumbered 49.343 (1g) and amended
5 to read:

6 49.343 (1g) **ESTABLISHMENT OF RATES.** Subject to sub. (1m), each residential care
7 center for children and youth, as defined in s. 48.02 (15d), and each group home, as

1 ~~defined in s. 48.02 (7), that is incorporated under ch. 180, 181, 185, or 193 shall~~
2 ~~establish a per client rate for its services and each child welfare agency shall~~
3 ~~establish a per client administrative rate~~✓~~for the administrative portion of its~~
4 ~~treatment foster care services.~~✓~~A residential care center for~~✓~~children and youth and~~
5 ~~a group home~~✓~~shall charge all purchasers the same rate for the same services and a~~
6 ~~child welfare agency shall charge all purchasers the same administrative~~✓~~rate for the~~
7 ~~same treatment foster care services.~~✓

History: 2007 a. 20 s. 830; Stats. 2007 s. 49.343.

8 ~~SECTION 3.~~✓ ~~49.343 (1d) of the statutes is created to read:~~

9 49.343 (1d)✓ ~~DEFINITIONS.~~ In this✓ ~~section:~~

10 (a) "Administrative rate"✓ ~~means the difference between the rate charged by a~~
11 ~~child welfare agency to a purchaser of treatment foster care services~~✓ ~~and the rate~~
12 ~~paid by the child welfare agency to a treatment foster parent~~✓ ~~for the care and~~
13 ~~maintenance of a child.~~

14 (b) "Child welfare agency"✓ ~~means a child welfare agency that is authorized~~
15 ~~under s. 48.61 (7) to license treatment foster homes.~~

16 (c) "Group home"✓ ~~means a group home, as defined in s. 48.02 (7), that is~~
17 ~~incorporated under ch. 180,~~✓ ~~181,~~✓ ~~185,~~✓ ~~or 193.~~✓

18 (d) "Residential care center for children and youth"✓ ~~has the meaning given in~~
19 ~~s. 48.02 (15d).~~✓

20 ~~SECTION 4.~~✓ ~~49.343 (1g) of the statutes, as affected by 2009~~✓ ~~Wisconsin Act~~
21 ~~(this act), is repealed and recreated to read:~~

22 49.343 (1g) ESTABLISHMENT OF RATES.✓ ~~For services provided beginning on~~
23 ~~January 1, 2011,~~✓ ~~the department~~✓ ~~shall establish the per client rate that a residential~~
24 ~~care center for children and youth~~✓ ~~or a group home may charge for its services, and~~

1 the per client administrative rate[✓] that a child welfare agency may charge for the
2 administrative portion of its treatment foster care services, as provided in this
3 section.[✓] A residential care center for children and youth[✓] and a group home shall
4 charge all purchasers the same rate for the same services and[✓] a child welfare agency
5 shall charge all purchasers the same administrative rate[✓] for the same treatment
6 foster care services.[✓] NEGOTIATION OF RATES.[✓]

7 SECTION 5. 49.343 (1m) of the statutes is amended to read:

8 49.343 (1m) Notwithstanding sub. (1) (1g)[✓], the department, a county
9 department under s. 46.215, 46.22, 46.23, 51.42, or 51.437, a group of those[✓] county
10 departments, or the department and one or more of those county departments, and
11 a residential care center for children and youth or group home,[✓] ~~as described in sub.~~
12 (1), may negotiate a per client rate for the services of that residential care center for
13 children and youth or group home, and the department, a county department under
14 s. 46.215, 46.22, 46.23, 51.42, or 51.437, a group of those[✓] county departments, or the
15 department and one or more of those county departments, and a child welfare agency
16 may negotiate a per client administrative rate for the administrative portion of the
17 treatment foster care services of that child welfare agency[✓], if the department, that
18 county department, the county departments in that group of county departments, or
19 the department and one or more of those county departments, agree to place 75% or
20 more of the residents of that residential care center for children and youth or group
21 home or of the treatment foster homes operated by that child welfare agency[✓] during
22 the period for which that rate is effective. A residential care center for children and
23 youth or group home that negotiates a per client rate under this subsection shall
24 charge ~~that rate to~~ all purchasers of its services the same rate[✓] for the same services
25 and a child welfare agency[✓] that negotiates a per client administrative rate[✓] under this

1 subsection shall charge all purchasers of its treatment foster care services the same
2 administrative rate for the same treatment foster care services.

History: 2007 a. 20 s. 830; Stats. 2007 s. 49.343.

3 **SECTION 6.** 49.343 (1m) of the statutes, as affected by 2009 Wisconsin Act
4 (this act), is repealed.

5 **SECTION 7.** 49.343 (2) of the statutes is renumbered 49.343 (2) (a) and amended
6 to read:

7 49.343 (2) (a) ~~By~~ By October 1, 2010, and annually after that, a residential care
8 center for children and youth or a group home, as described in sub. (1) or (1m), shall
9 submit to the department the rate it charges and any change in that rate before a
10 charge is made to any purchaser per client rate that it proposes to charge for services
11 provided in the next year and a child welfare agency shall submit to the department
12 the proposed per client administrative rate that it proposes to charge for treatment
13 foster care services provided in the next year. The department shall provide forms
14 and instructions for the submission of rates and changes in proposed rates under this
15 subsection paragraph and a residential care center for children and youth or a group
16 home, or child welfare agency that is required to submit a rate or a change in a
17 proposed rate under this subsection paragraph shall submit that rate or change in
18 a proposed rate using those forms and instructions.

History: 2007 a. 20 s. 830; Stats. 2007 s. 49.343.

19 **SECTION 8.** 49.343 (2) (title) of the statutes is created to read:
20 49.343 (2) (title) DETERMINATION OF RATES.

21 **SECTION 9.** 49.343 (2) (a) of the statutes, as affected by 2009 Wisconsin Act
22 (this act), is repealed and recreated to read:

23 49.343 (2) (a) By October 1 annually, a residential care center for children and
24 youth or a group home shall submit to the department the per client rate that it

1 proposes to charge for services provided in the next year and a child welfare agency
2 shall submit to the department the proposed per client administrative rate that it
3 proposes to charge for treatment foster care services provided in the next year. The
4 department shall provide forms and instructions for the submission of proposed
5 rates under this paragraph and a residential care center for children and youth,
6 group home, or child welfare agency that is required to submit a proposed rate under
7 this paragraph shall submit that proposed rate using those forms and instructions.

8 **SECTION 10.** 49.343 (2) (b) of the statutes is created to read:

9 49.343 (2) (b) The department shall review a proposed rate submitted under
10 par. (a) and audit the residential care center for children and youth, group home, or
11 child welfare agency submitting the proposed rate to determine whether the
12 proposed rate is appropriate to the level of services to be provided, the qualifications
13 of the residential care center for children and youth, group home, or child welfare
14 agency to provide those services, and the reasonable and necessary costs of providing
15 those services. In reviewing a proposed rate, the department shall consider all of the
16 following factors:

17 1. Changes in the consumer price index for all urban consumers, U.S. city
18 average, as determined by the U.S. department of labor, for the 12 months ending
19 on June 30 of the year in which the proposed rate is submitted.

20 2. Changes in the allowable costs of the residential care center for children and
21 youth, group home, or child welfare agency based on current actual cost data or
22 documented projections of costs.

23 3. Changes in program utilization that affect the per client rate or per client
24 administrative rate.

25 4. Changes in the department's expectations relating to service delivery.

1 5. Changes in service delivery proposed by the residential care center for
2 children and youth, group home, or child welfare agency and agreed to by the
3 department.✓

4 6. The loss of any source of revenue that had been used to pay expenses,
5 resulting in a lower per client rate or per client administrative rate for services.✓

6 7. Changes in any state or federal laws, rules, or regulations that result in any
7 change in the cost of providing services, including any changes in the minimum
8 wage, as defined in s. 49.141 (1) (g).✓

9 8. Competitive factors.✓

10 9. The availability of funding to pay for the services to be provided under the
11 proposed rate.✓

12 10. Any other factor relevant to the setting of a rate that the department may
13 determine by rule promulgated under sub. (4).✓

14 **SECTION 11.** 49.343 (2) (c) of the statutes is created to read:

15 49.343 (2) (c) If the department determines under par. (b)✓ that a proposed rate
16 submitted under par. (a)✓ is appropriate, the department shall approve the proposed
17 rate. If the department does not approve a proposed rate, the department shall
18 negotiate with the residential care center for children and youth,✓ group home, or
19 child welfare agency to determine an agreed to rate. If after negotiations a rate is
20 not agreed to, the department and residential care center for children and youth,
21 group home, or child welfare agency shall engage in mediation under the rate
22 resolution procedure promulgated by rule under sub. (4)✓ to arrive at an agreed to
23 rate. If after mediation a rate is not agreed to, the residential care center for children
24 and youth, group home, or child welfare agency may not provide the service for which
25 the rate was proposed.✓

1 **SECTION 12.** 49.343 (3) of the statutes is amended to read:

2 49.343 (3) AUDIT ✓ The department may require an audit of any residential care
3 center for children and youth ~~or, group home, as described in sub. (1) or (1m),~~ ✓ or child
4 welfare agency ✓ for the purpose of collecting federal funds.

5 History: 2007 a. 20 s. 830; Stats. 2007 s. 49.343.

5 **SECTION 13.** 49.343 (4) of the statutes is created to read:

6 49.343 (4) RULES ✓ The department shall promulgate rules to implement this
7 section. ✓ Those rules shall include rules providing for all of the following:

8 (a) Standards for determining whether a proposed rate is appropriate to the
9 level of services to be provided, the qualifications of a residential care center for
10 children and youth, ✓ group home, or child welfare agency to provide those services,
11 and the reasonable and necessary costs of providing those services. ✓

12 (b) Factors for the department to consider in reviewing a proposed rate. ✓

13 (c) Procedures for reviewing proposed rates, including rate resolution
14 procedures for mediating an agreed to ~~a~~ rate when negotiations fail ~~to~~ to produce an
15 agreed to rate. ✓

16 **SECTION 14.** 938.357 (4) (c) 1. of the statutes is amended to read:

17 938.357 (4) (c) 1. If a juvenile is placed in a Type 2 juvenile correctional facility
18 operated by a child welfare agency under par. (a) and it appears that a less restrictive
19 placement would be appropriate for the juvenile, the department, after consulting
20 with the child welfare agency that is operating the Type 2 juvenile correctional
21 facility, may place the juvenile in a less restrictive placement, and may return the
22 juvenile to the Type 2 juvenile correctional facility without a hearing under sub. (1)

23 (am) 2. The ~~child welfare agency shall establish a~~ ↓ rate for each type of placement

1 shall be established by the department of children and families ✓ in the manner
2 provided in s. 49.343.

History: 1995 a. 27 s. 9126 (19); 1995 a. 77, 275, 352; 1997 a. 27, 35, 80, 205, 237; 1999 a. 9, 103; 2001 a. 16, 103, 109; 2005 a. 344; 2007 a. 20, 199.

3 **SECTION 15. 938.357 (4) (c) 2.** of the statutes is amended to read:

4 938.357 (4) (c) 2. If a juvenile is placed in a Type 2 residential care center for
5 children and youth under s. 938.34 (4d) and it appears that a less restrictive
6 placement would be appropriate for the juvenile, the child welfare agency operating
7 the Type 2 residential care center for children and youth shall notify the county
8 department that has supervision over the juvenile and, if the county department
9 agrees to a change in placement under this subdivision, the child welfare agency may
10 place the juvenile in a less restrictive placement. A child welfare agency may also,
11 with the agreement of the county department that has supervision over a juvenile
12 who is placed in a less restrictive placement under this subdivision, return the
13 juvenile to the Type 2 residential care center for children and youth without a
14 hearing under sub. (1) (am) 2. The child welfare agency shall establish a rate for each
15 type of placement shall be established by the department of children and families ✓ in
16 the manner provided in s. 49.343.

History: 1995 a. 27 s. 9126 (19); 1995 a. 77, 275, 352; 1997 a. 27, 35, 80, 205, 237; 1999 a. 9, 103; 2001 a. 16, 103, 109; 2005 a. 344; 2007 a. 20, 199.

17 **SECTION 9108. Nonstatutory provisions; Children and Families.**

18 (1) CHILD WELFARE PROVIDER RATE REGULATION. ✓

19 (a) *Transition.* ✓ Notwithstanding section 49.343 (1g) ✓ and (1m) ✓ of the statutes,
20 as affected by this act, ✓ for services provided beginning on ✓ January 1, 2010, and
21 ending on December 31, 2010, ✓ a residential care center for children and youth, ✓ as
22 defined in section 49.343 (1d) (d) ✓ of the statutes, as created by this act, ✓ and a group
23 home, as defined in section 49.343 (1d) (c) ✓ of the statutes, as created by this act, ✓ shall
24 charge the same per client rate for its services as it charged for services provided on

SECTION 9108

December 31, 2009, and a child welfare agency, as defined in section 49.343 (1d) (b) of the statutes, as created by this act, shall charge the same per client administrative rate, as defined in section 49.343 (1d) (a) of the statutes, as created by this act, for the administrative portion of its treatment foster care services as it charged for the administrative portion of those services on December 31, 2009.

(b) *Rules.*

1. 'Permanent rules.' The department of children and families shall submit in proposed form the rules required under section 49.343 (4) of the statutes, as created by this act, to the legislative council staff under section 227.15 (1) of the statutes no later than the first day of the 7th month beginning after the effective date of this subdivision.

2. 'Emergency rules.' Using the procedure under section 227.24 of the statutes, the department of children and families may promulgate the rules required under section 49.343 (4) of the statutes, as created by this act, for the period before the effective date of the rules submitted under subdivision 1., but not to exceed the period authorized under section 227.24 (1) (c) and (2) of the statutes. Notwithstanding section 227.24 (1) (a), (2) (b), and (3) of the statutes, the department is not required to provide evidence that promulgating a rule under this subdivision as an emergency rule is necessary for the preservation of the public peace, health, safety, or welfare and is not required to provide a finding of emergency for a rule promulgated under this subdivision.

SECTION 9308. Initial applicability; Children and Families.

(1) CHILD WELFARE PROVIDER RATE REGULATION.

(a) Section 9108 (1) (a) of this act first applies to a contract for the provision of services that is in effect on December 31, 2009, and that contains provisions that are

1 inconsistent with that treatment on the day on which the contract expires or is
2 extended, modified, or renewed, whichever occurs first.✓

3 (b) The repeal and recreation of section 49.343 (1g)✓ of the statutes first applies
4 to a contract for the provision of services that is in effect on December 31, 2010, and
5 that contains provisions that are inconsistent with that treatment on the day on
6 which the contract expires or is✓ extended, modified, or renewed, whichever occurs
7 first.

8 **SECTION 9408.✓ Effective dates; Children and Families.**

9 (1) CHILD WELFARE PROVIDER RATE REGULATION. The repeal and recreation of
10 section 49.343 (1g)✓ and (2) (a)✓ of the statutes, the repeal of section 49.343 (1m) of the
11 statutes, and the treatment of section 938.357 (4) (c) 1. and 2. of the statutes take
12 effect on January 1, 2011.✓

13 (END)

④ treatment of section
938.357(4)(c)1. and 2. of the
statutes, the repeal of section 49.343(1m) of the statutes,
and the

Malaise, Gordon

From: Stinebrink, Cory R - DOA [Cory.Stinebrink@wisconsin.gov]
Sent: Saturday, January 24, 2009 2:08 PM
To: Malaise, Gordon
Subject: RE: LRB Draft: 09-0883/1 Child welfare provider rate regulation

Good afternoon, Gordon-

I have a list of comments on things that I had discussed with DCF regarding this draft.

1. The definition of group homes in the new 49.343(1d)(c) does not include Limited Liability (LLC) group homes incorporated under chapter 183. DCF has licensed several group homes that are LLC group homes, primarily in the Milwaukee area and they do not fall under the definition in the proposal. These facilities should be added by reference to chapter 183.
2. While the vast majority of group homes are incorporated, there can be situations where group homes are operated as a sole proprietor-type business without being incorporated. Particularly when a new group home is starting out as they may not be incorporated right away. Thus the definition of group home in the new 49.343(1d)(c) should include unincorporated group homes.
3. Sections 14 and 15 of the draft amend 938.347(4)(c). These sections reference secure Type 2 facilities which are licensed jointly with the Department of Corrections, with DOC overseeing the secure Type 2 part of the facility and DCF overseeing the non-secure (i.e. Type 1) part of the facility. DCF has not involved DOC in the provider rate regulation proposal and thus we are not sure how this aspect of the proposal would affect DOC. DCF could still regulate the rate charged by facilities for both secure and non-secure portions, but we would want to work with DOC on the secure part. We suggest indicating that DCF would establish the rates for Type 2 facilities in consultation with DOC.
4. Many RCCs provide multiple levels of service and each level has its own rate. It might be helpful if references to "per client rate" in multiple sections of the draft be changed to "per client rate or rates" to clarify the DCF has authority to regulate the rate for each level of service. But we defer to LRB if "per client rate" covers situations of RCC with multiple rates.

990.01(1) singular/plural

From: Henry, Patty [mailto:Patty.Henry@legis.wisconsin.gov]
Sent: Tuesday, December 02, 2008 1:07 PM
To: Stinebrink, Cory R - DOA
Cc: Hanle, Bob - DOA; Hanaman, Cathlene - LEGIS; Beadles, Kathleen - DOA
Subject: LRB Draft: 09-0883/1 Child welfare provider rate regulation

Following is the PDF version of draft 09-0883/1.



State of Wisconsin
2009 - 2010 LEGISLATURE

LRB-0883/1

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DOA:.....Stinebrink, BB0229 - Child welfare provider rate regulation

FOR 2009-11 BUDGET -- NOT READY FOR INTRODUCTION

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1 AN ACT ...; relating to: the budget.

Analysis by the Legislative Reference Bureau

HEALTH AND HUMAN SERVICES

CHILDREN

Under current law, a residential care center for children and youth (residential care center) and a group home must establish a per client rate for its services and must submit to DCF that rate and any change in that rate before a charge is made to any purchaser of those services.

This bill requires DCF to establish the per client rate that a residential care center or a group home may charge for its services, and the per client administrative rate that a child welfare agency may charge for the administrative portion of its treatment foster care services, for services provided beginning on January 1, 2011. The bill also freezes for 2010 at the 2009 level the per client rate that a residential care center or a group home may charge for its services and the per client administrative rate that a child welfare agency may charge for the administrative portion of its treatment foster care services. The bill defines "administrative rate" as the difference between the rate charged by a child welfare agency to a purchaser of treatment foster care services and the rate paid by the child welfare agency to a treatment foster parent for the care and maintenance of a child.

Under the bill, by October 1 annually, a residential care center or a group home must submit to DCF the per client rate that it proposes to charge for services provided in the next year and a child welfare agency must submit to DCF the

proposed per client administrative rate that it proposes to charge for treatment foster care services provided in the next year. DCF must then review the proposed rate and audit the residential care center, group home, or child welfare agency to determine whether the proposed rate is appropriate to the level of services to be provided; the qualifications of the residential care center, group home, or child welfare agency to provide those services; and the reasonable and necessary costs of providing those services.

In reviewing a proposed rate, DCF must consider certain factors, including: 1) changes in the consumer price index; 2) changes in allowable costs based on current actual cost data or documented projections of costs; 3) changes in program utilization that affect the per client rate or per client administrative rate; 4) changes in DCF's expectations relating to service delivery; 5) changes in service delivery proposed by the residential care center, group home, or child welfare agency and agreed to by DCF; 6) the loss of any source of revenue that had been used to pay expenses; 7) changes in any state or federal laws, rules, or regulations that result in any change in the cost of providing services, including any changes in the minimum wage; 8) competitive factors; 9) the availability of funding to pay for the services to be provided under the proposed rate; and 10) any other factor relevant to the setting of a rate that DCF may determine by rule promulgated under the bill.

If DCF determines that a proposed rate is appropriate, DCF must approve the proposed rate. If DCF does not approve a proposed rate, DCF must negotiate with the residential care center, group home, or child welfare agency to determine an agreed to rate. If after negotiations a rate is not agreed to, the parties must engage in mediation to arrive at an agreed to rate. If after mediation a rate is not agreed to, the residential care center, group home, or child welfare agency may not provide the service for which the rate was proposed.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

✓
1 **SECTION 1.** 49.343 (title) of the statutes is amended to read:

2 **49.343 (title) Rates for residential care centers and, group homes, and**
3 **child welfare agencies.**

✓
4 **SECTION 2.** 49.343 (1) of the statutes is renumbered 49.343 (1g) and amended
5 to read:

6 **49.343 (1g) ESTABLISHMENT OF RATES.** Subject to sub. (1m), each residential care
7 center for children and youth, ~~as defined in s. 48.02 (15d),~~ and each group home, as

1 ~~defined in s. 48.02 (7), that is incorporated under ch. 180, 181, 185, or 193~~ shall
2 establish a per client rate for its services and each child welfare agency shall
3 establish a per client administrative rate for the administrative portion of its
4 treatment foster care services. A residential care center for children and youth and
5 a group home shall charge all purchasers the same rate for the same services and a
6 child welfare agency shall charge all purchasers the same administrative rate for the
7 same treatment foster care services.

8 **SECTION 3.** 49.343 (1d) of the statutes is created to read:

9 49.343 (1d) DEFINITIONS. In this section:

10 (a) "Administrative rate" means the difference between the rate charged by a
11 child welfare agency to a purchaser of treatment foster care services and the rate
12 paid by the child welfare agency to a treatment foster parent for the care and
13 maintenance of a child.

14 (b) "Child welfare agency" means a child welfare agency that is authorized
15 under s. 48.61 (7) to license treatment foster homes.

16 (c) "Group home" ~~means a group home, as defined in s. 48.02 (7), that is~~
17 ~~incorporated under ch. 180, 181, 185, or 193.~~ *has the meaning given in*

18 (d) "Residential care center for children and youth" has the meaning given in
19 s. 48.02 (15d).

20 **SECTION 4.** 49.343 (1g) of the statutes, as affected by 2009 Wisconsin Act
21 (this act), is repealed and recreated to read: *of children and families*

22 49.343 (1g) ESTABLISHMENT OF RATES. For services provided beginning on
23 January 1, 2011, the department shall establish the per client rate that a residential
24 care center for children and youth or a group home may charge for its services, and
25 the per client administrative rate that a child welfare agency may charge for the

In establishing rates
for a placement specified in 90 938.0357 (4) ~~or~~ ^{(c) 10}
201 the department ~~shall~~ ^{shall}
consult with the department of corrections

1 administrative portion of its treatment foster care services, as provided in this
2 section. A residential care center for children and youth and a group home shall
3 charge all purchasers the same rate for the same services and a child welfare agency
4 shall charge all purchasers the same administrative rate for the same treatment
5 foster care services.

6 **SECTION 5.** 49.343 (1m) of the statutes is amended to read:

7 49.343 (1m) NEGOTIATION OF RATES. Notwithstanding sub. (1) (1g), the
8 department, a county department under s. 46.215, 46.22, 46.23, 51.42, or 51.437, a
9 group of those county departments, or the department and one or more of those
10 county departments, and a residential care center for children and youth or group
11 home, ~~as described in sub. (1),~~ may negotiate a per client rate for the services of that
12 residential care center for children and youth or group home, and the department,
13 a county department under s. 46.215, 46.22, 46.23, 51.42, or 51.437, a group of those
14 county departments, or the department and one or more of those county
15 departments, and a child welfare agency may negotiate a per client administrative
16 rate for the administrative portion of the treatment foster care services of that child
17 welfare agency, if the department, that county department, the county departments
18 in that group of county departments, or the department and one or more of those
19 county departments, agree to place 75% or more of the residents of that residential
20 care center for children and youth or group home or of the treatment foster homes
21 operated by that child welfare agency during the period for which that rate is
22 effective. A residential care center for children and youth or group home that
23 negotiates a per client rate under this subsection shall charge ~~that rate to~~ all
24 purchasers of its services the same rate for the same services and a child welfare
25 agency that negotiates a per client administrative rate under this subsection shall

1 charge all purchasers of its treatment foster care services the same administrative
2 rate for the same treatment foster care services.

3 **SECTION 6.** 49.343 (1m) of the statutes, as affected by 2009 Wisconsin Act
4 (this act), is repealed.

5 **SECTION 7.** 49.343 (2) (title) of the statutes is created to read:

6 49.343 (2) (title) DETERMINATION OF RATES.

7 **SECTION 8.** 49.343 (2) of the statutes is renumbered 49.343 (2) (a) and amended
8 to read:

9 49.343 (2) (a) A By October 1, 2010, and annually after that, a residential care
10 center for children and youth or a group home, as described in sub. (1) or (1m), shall
11 submit to the department the rate it charges and any change in that rate before a
12 charge is made to any purchaser per client rate that it proposes to charge for services
13 provided in the next year and a child welfare agency shall submit to the department
14 the proposed per client administrative rate that it proposes to charge for treatment
15 foster care services provided in the next year. The department shall provide forms
16 and instructions for the submission of rates and changes in proposed rates under this
17 subsection paragraph and a residential care center for children and youth or a group
18 home, or child welfare agency that is required to submit a rate or a change in a
19 proposed rate under this subsection paragraph shall submit that rate or change in
20 a proposed rate using those forms and instructions.

21 **SECTION 9.** 49.343 (2) (a) of the statutes, as affected by 2009 Wisconsin Act
22 (this act), is repealed and recreated to read:

23 49.343 (2) (a) By October 1 annually, a residential care center for children and
24 youth or a group home shall submit to the department the per client rate that it
25 proposes to charge for services provided in the next year and a child welfare agency

1 shall submit to the department the proposed per client administrative rate that it
2 proposes to charge for treatment foster care services provided in the next year. The
3 department shall provide forms and instructions for the submission of proposed
4 rates under this paragraph and a residential care center for children and youth,
5 group home, or child welfare agency that is required to submit a proposed rate under
6 this paragraph shall submit that proposed rate using those forms and instructions.

7 **SECTION 10.** 49.343 (2) (b) of the statutes is created to read:

8 49.343 (2) (b) The department shall review a proposed rate submitted under
9 par. (a) and audit the residential care center for children and youth, group home, or
10 child welfare agency submitting the proposed rate to determine whether the
11 proposed rate is appropriate to the level of services to be provided, the qualifications
12 of the residential care center for children and youth, group home, or child welfare
13 agency to provide those services, and the reasonable and necessary costs of providing
14 those services. In reviewing a proposed rate, the department shall consider all of the
15 following factors:

16 1. Changes in the consumer price index for all urban consumers, U.S. city
17 average, as determined by the U.S. department of labor, for the 12 months ending
18 on June 30 of the year in which the proposed rate is submitted.

19 2. Changes in the allowable costs of the residential care center for children and
20 youth, group home, or child welfare agency based on current actual cost data or
21 documented projections of costs.

22 3. Changes in program utilization that affect the per client rate or per client
23 administrative rate.

24 4. Changes in the department's expectations relating to service delivery.

1 5. Changes in service delivery proposed by the residential care center for
2 children and youth, group home, or child welfare agency and agreed to by the
3 department.

4 6. The loss of any source of revenue that had been used to pay expenses,
5 resulting in a lower per client rate or per client administrative rate for services.

6 7. Changes in any state or federal laws, rules, or regulations that result in any
7 change in the cost of providing services, including any changes in the minimum
8 wage, as defined in s. 49.141 (1) (g).

9 8. Competitive factors.

10 9. The availability of funding to pay for the services to be provided under the
11 proposed rate.

12 10. Any other factor relevant to the setting of a rate that the department may
13 determine by rule promulgated under sub. (4).

14 **SECTION 11.** 49.343 (2) (c) of the statutes is created to read:

15 49.343 (2) (c) If the department determines under par. (b) that a proposed rate
16 submitted under par. (a) is appropriate, the department shall approve the proposed
17 rate. If the department does not approve a proposed rate, the department shall
18 negotiate with the residential care center for children and youth, group home, or
19 child welfare agency to determine an agreed to rate. If after negotiations a rate is
20 not agreed to, the department and residential care center for children and youth,
21 group home, or child welfare agency shall engage in mediation under the rate
22 resolution procedure promulgated by rule under sub. (4) to arrive at an agreed to
23 rate. If after mediation a rate is not agreed to, the residential care center for children
24 and youth, group home, or child welfare agency may not provide the service for which
25 the rate was proposed.

✓
1 SECTION 12. 49.343 (3) of the statutes is amended to read:

2 49.343 (3) AUDIT. The department may require an audit of any residential care
3 center for children and youth or, group home, as described in sub. (1) or (1m), or child
4 welfare agency for the purpose of collecting federal funds.

5 SECTION 13. 49.343 (4) of the statutes is created to read:

6 49.343 (4) RULES. The department shall promulgate rules to implement this
7 section. Those rules shall include rules providing for all of the following:

8 (a) Standards for determining whether a proposed rate is appropriate to the
9 level of services to be provided, the qualifications of a residential care center for
10 children and youth, group home, or child welfare agency to provide those services,
11 and the reasonable and necessary costs of providing those services.

12 (b) Factors for the department to consider in reviewing a proposed rate.

13 (c) Procedures for reviewing proposed rates, including rate resolution
14 procedures for mediating an agreed to rate when negotiations fail to produce an
15 agreed to rate.

✓
16 SECTION 14. 938.357 (4) (c) 1. of the statutes is amended to read:

17 938.357 (4) (c) 1. If a juvenile is placed in a Type 2 juvenile correctional facility
18 operated by a child welfare agency under par. (a) and it appears that a less restrictive
19 placement would be appropriate for the juvenile, the department, after consulting
20 with the child welfare agency that is operating the Type 2 juvenile correctional
21 facility, may place the juvenile in a less restrictive placement, and may return the
22 juvenile to the Type 2 juvenile correctional facility without a hearing under sub. (1)
23 (am) 2. ~~The child welfare agency shall establish a rate for each type of placement~~
24 shall be established by the department of children and families in the manner
25 provided in s. 49.343.

in consultation with the department

at the discretion of the department

✓
SECTION 15. 938.357 (4) (c) 2. of the statutes is amended to read:

938.357 (4) (c) 2. If a juvenile is placed in a Type 2 residential care center for children and youth under s. 938.34 (4d) and it appears that a less restrictive placement would be appropriate for the juvenile, the child welfare agency operating the Type 2 residential care center for children and youth shall notify the county department that has supervision over the juvenile and, if the county department agrees to a change in placement under this subdivision, the child welfare agency may place the juvenile in a less restrictive placement. A child welfare agency may also, with the agreement of the county department that has supervision over a juvenile who is placed in a less restrictive placement under this subdivision, return the juvenile to the Type 2 residential care center for children and youth without a hearing under sub. (1) (am) 2. The child welfare agency shall establish a rate for each type of placement shall be established by the department of children and families in the manner provided in s. 49.343. in consultation with the department

SECTION 9108. Nonstatutory provisions; Children and Families.

(1) CHILD WELFARE PROVIDER RATE REGULATION.

(a) *Transition.* Notwithstanding section 49.343 (1g) and (1m) of the statutes, as affected by this act, for services provided beginning on January 1, 2010, and ending on December 31, 2010, a residential care center for children and youth, as defined in section 49.343 (1d) (d) of the statutes, as created by this act, and a group home, as defined in section 49.343 (1d) (c) of the statutes, as created by this act, shall charge the same per client rate for its services as it charged for services provided on December 31, 2009, and a child welfare agency, as defined in section 49.343 (1d) (b) of the statutes, as created by this act, shall charge the same per client administrative rate, as defined in section 49.343 (1d) (a) of the statutes, as created by this act, for

1 the administrative portion of its treatment foster care services as it charged for the
2 administrative portion of those services on December 31, 2009.

3 (b) *Rules.*

4 1. 'Permanent rules.' The department of children and families shall submit in
5 proposed form the rules required under section 49.343 (4) of the statutes, as created
6 by this act, to the legislative council staff under section 227.15 (1) of the statutes no
7 later than the first day of the 7th month beginning after the effective date of this
8 subdivision.

9 2. 'Emergency rules.' Using the procedure under section 227.24 of the statutes,
10 the department of children and families may promulgate the rules required under
11 section 49.343 (4) of the statutes, as created by this act, for the period before the
12 effective date of the rules submitted under subdivision 1., but not to exceed the period
13 authorized under section 227.24 (1) (c) and (2) of the statutes. Notwithstanding
14 section 227.24 (1) (a), (2) (b), and (3) of the statutes, the department is not required
15 to provide evidence that promulgating a rule under this subdivision as an emergency
16 rule is necessary for the preservation of the public peace, health, safety, or welfare
17 and is not required to provide a finding of emergency for a rule promulgated under
18 this subdivision.

19 **SECTION 9308. Initial applicability; Children and Families.**

20 (1) CHILD WELFARE PROVIDER RATE REGULATION.

21 (a) SECTION 9108 (1) (a) of this act first applies to a contract for the provision
22 of services that is in effect on December 31, 2009, and that contains provisions that
23 are inconsistent with that treatment on the day on which the contract expires or is
24 extended, modified, or renewed, whichever occurs first.

1 (b) The repeal and recreation of section 49.343 (1g) of the statutes first applies
2 to a contract for the provision of services that is in effect on December 31, 2010, and
3 that contains provisions that are inconsistent with that treatment on the day on
4 which the contract expires or is extended, modified, or renewed, whichever occurs
5 first.

6 **SECTION 9408. Effective dates; Children and Families.**

7 (1) CHILD WELFARE PROVIDER RATE REGULATION. The treatment of section 938.357
8 (4) (c) 1. and 2. of the statutes, the repeal of section 49.343 (1m) of the statutes, and
9 the repeal and recreation of section 49.343 (1g) and (2) (a) of the statutes take effect
10 on January 1, 2011.

11 (END)

D-note

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0883/2dn

...GMM:.....

e *bjk*

Date

Cory:

This redraft addresses the issues raised in your redraft instructions as follows:

1. The draft defines "group home" by simply cross referencing the definition in s. 48.02 (7). As such, all licensed group homes are covered regardless of whether they are incorporated, unincorporated, or incorporated as limited liability companies.
- > 2. The draft requires DCF to consult with DOC *is* establishing rates for a placement specified in s. 938.357 (4) (c) 1. or 2. *for e in e of*
3. Section 990.01 (1), which sets forth rules *of* construction *for* the statutes, provides that the singular includes the plural and the plural includes the singular. Therefore, "rate" includes "rates" and, as such, DCF would have the authority to approve multiple rates without having to say in the statutes "rate or rates" *o*
- >

Gordon M. Malaise
Senior Legislative Attorney
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E-mail: gordon.malaise@legis.wisconsin.gov

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0883/2dn
GMM:bjk:md

January 25, 2009

Cory:

This redraft addresses the issues raised in your redraft instructions as follows:

1. The draft defines "group home" by simply cross referencing the definition in s. 48.02 (7). As such, all licensed group homes are covered regardless of whether they are incorporated, unincorporated, or incorporated as limited liability companies.
2. The draft requires DCF to consult with DOC in establishing rates for a placement specified in s. 938.357 (4) (c) 1. or 2.
3. Section 990.001 (1), which sets forth rules for construction of the statutes, provides that the singular includes the plural and the plural includes the singular. Therefore, "rate" includes "rates" and, as such, DCF would have the authority to approve multiple rates without having to say in the statutes "rate or rates."

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State of Wisconsin
2009 - 2010 LEGISLATURE

LRB-0883/2
GMM:jld&bjk:md

DOA:.....Stinebrink, BB0229 - Child welfare provider rate regulation
FOR 2009-11 BUDGET -- NOT READY FOR INTRODUCTION

1 **AN ACT ...; relating to:** the budget.

Analysis by the Legislative Reference Bureau

HEALTH AND HUMAN SERVICES

CHILDREN

Under current law, a residential care center for children and youth (residential care center) and a group home must establish a per client rate for its services and must submit to DCF that rate and any change in that rate before a charge is made to any purchaser of those services.

This bill requires DCF to establish the per client rate that a residential care center or a group home may charge for its services, and the per client administrative rate that a child welfare agency may charge for the administrative portion of its treatment foster care services, for services provided beginning on January 1, 2011. The bill also freezes for 2010 at the 2009 level the per client rate that a residential care center or a group home may charge for its services and the per client administrative rate that a child welfare agency may charge for the administrative portion of its treatment foster care services. The bill defines "administrative rate" as the difference between the rate charged by a child welfare agency to a purchaser of treatment foster care services and the rate paid by the child welfare agency to a treatment foster parent for the care and maintenance of a child.

Under the bill, by October 1 annually, a residential care center or a group home must submit to DCF the per client rate that it proposes to charge for services provided in the next year and a child welfare agency must submit to DCF the

proposed per client administrative rate that it proposes to charge for treatment foster care services provided in the next year. DCF must then review the proposed rate and audit the residential care center, group home, or child welfare agency to determine whether the proposed rate is appropriate to the level of services to be provided; the qualifications of the residential care center, group home, or child welfare agency to provide those services; and the reasonable and necessary costs of providing those services.

In reviewing a proposed rate, DCF must consider certain factors, including: 1) changes in the consumer price index; 2) changes in allowable costs based on current actual cost data or documented projections of costs; 3) changes in program utilization that affect the per client rate or per client administrative rate; 4) changes in DCF's expectations relating to service delivery; 5) changes in service delivery proposed by the residential care center, group home, or child welfare agency and agreed to by DCF; 6) the loss of any source of revenue that had been used to pay expenses; 7) changes in any state or federal laws, rules, or regulations that result in any change in the cost of providing services, including any changes in the minimum wage; 8) competitive factors; 9) the availability of funding to pay for the services to be provided under the proposed rate; and 10) any other factor relevant to the setting of a rate that DCF may determine by rule promulgated under the bill.

If DCF determines that a proposed rate is appropriate, DCF must approve the proposed rate. If DCF does not approve a proposed rate, DCF must negotiate with the residential care center, group home, or child welfare agency to determine an agreed to rate. If after negotiations a rate is not agreed to, the parties must engage in mediation to arrive at an agreed to rate. If after mediation a rate is not agreed to, the residential care center, group home, or child welfare agency may not provide the service for which the rate was proposed.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 49.343 (title) of the statutes is amended to read:

2 **49.343 (title) Rates for residential care centers and, group homes, and**
3 **child welfare agencies.**

4 **SECTION 2.** 49.343 (1) of the statutes is renumbered 49.343 (1g) and amended
5 to read:

6 **49.343 (1g) ESTABLISHMENT OF RATES.** Subject to sub. (1m), each residential care
7 center for children and youth, ~~as defined in s. 48.02 (15d),~~ and each group home, as

1 ~~defined in s. 48.02 (7), that is incorporated under ch. 180, 181, 185, or 193 shall~~
2 ~~establish a per client rate for its services and each child welfare agency shall~~
3 ~~establish a per client administrative rate for the administrative portion of its~~
4 ~~treatment foster care services. A residential care center for children and youth and~~
5 ~~a group home shall charge all purchasers the same rate for the same services and a~~
6 ~~child welfare agency shall charge all purchasers the same administrative rate for the~~
7 ~~same treatment foster care services.~~

8 **SECTION 3.** 49.343 (1d) of the statutes is created to read:

9 49.343 (1d) DEFINITIONS. In this section:

10 (a) "Administrative rate" means the difference between the rate charged by a
11 child welfare agency to a purchaser of treatment foster care services and the rate
12 paid by the child welfare agency to a treatment foster parent for the care and
13 maintenance of a child.

14 (b) "Child welfare agency" means a child welfare agency that is authorized
15 under s. 48.61 (7) to license treatment foster homes.

16 (c) "Group home" has the meaning given in s. 48.02 (7).

17 (d) "Residential care center for children and youth" has the meaning given in
18 s. 48.02 (15d).

19 **SECTION 4.** 49.343 (1g) of the statutes, as affected by 2009 Wisconsin Act
20 (this act), is repealed and recreated to read:

21 49.343 (1g) ESTABLISHMENT OF RATES. For services provided beginning on
22 January 1, 2011, the department shall establish the per client rate that a residential
23 care center for children and youth or a group home may charge for its services, and
24 the per client administrative rate that a child welfare agency may charge for the
25 administrative portion of its treatment foster care services, as provided in this

1 section. In establishing rates for a placement specified in s. 938.357 (4) (c) 1. or 2.,
2 the department shall consult with the department of corrections. A residential care
3 center for children and youth and a group home shall charge all purchasers the same
4 rate for the same services and a child welfare agency shall charge all purchasers the
5 same administrative rate for the same treatment foster care services.

6 **SECTION 5.** 49.343 (1m) of the statutes is amended to read:

7 49.343 (1m) NEGOTIATION OF RATES. Notwithstanding sub. (1) (1g), the
8 department, a county department under s. 46.215, 46.22, 46.23, 51.42, or 51.437, a
9 group of those county departments, or the department and one or more of those
10 county departments, and a residential care center for children and youth or group
11 home, ~~as described in sub. (1),~~ may negotiate a per client rate for the services of that
12 residential care center for children and youth or group home, and the department,
13 a county department under s. 46.215, 46.22, 46.23, 51.42, or 51.437, a group of those
14 county departments, or the department and one or more of those county
15 departments, and a child welfare agency may negotiate a per client administrative
16 rate for the administrative portion of the treatment foster care services of that child
17 welfare agency, if the department, that county department, the county departments
18 in that group of county departments, or the department and one or more of those
19 county departments, agree to place 75% or more of the residents of that residential
20 care center for children and youth or group home or of the treatment foster homes
21 operated by that child welfare agency during the period for which that rate is
22 effective. A residential care center for children and youth or group home that
23 negotiates a per client rate under this subsection shall charge ~~that rate to all~~
24 purchasers of its services the same rate for the same services and a child welfare
25 agency that negotiates a per client administrative rate under this subsection shall

1 charge all purchasers of its treatment foster care services the same administrative
2 rate for the same treatment foster care services.

3 **SECTION 6.** 49.343 (1m) of the statutes, as affected by 2009 Wisconsin Act
4 (this act), is repealed.

5 **SECTION 7.** 49.343 (2) (title) of the statutes is created to read:

6 49.343 (2) (title) DETERMINATION OF RATES.

7 **SECTION 8.** 49.343 (2) of the statutes is renumbered 49.343 (2) (a) and amended
8 to read:

9 49.343 (2) (a) A By October 1, 2010, and annually after that, a residential care
10 center for children and youth or a group home, as described in sub. (1) or (1m), shall
11 submit to the department the rate it charges and any change in that rate before a
12 charge is made to any purchaser per client rate that it proposes to charge for services
13 provided in the next year and a child welfare agency shall submit to the department
14 the proposed per client administrative rate that it proposes to charge for treatment
15 foster care services provided in the next year. The department shall provide forms
16 and instructions for the submission of ~~rates and changes in proposed~~ rates under this
17 ~~subsection paragraph~~ and a residential care center for children and youth or a, group
18 ~~home, or child welfare agency~~ that is required to submit a rate or a change in a
19 ~~proposed~~ rate under this ~~subsection paragraph~~ shall submit that rate or change in
20 a ~~proposed~~ rate using those forms and instructions.

21 **SECTION 9.** 49.343 (2) (a) of the statutes, as affected by 2009 Wisconsin Act
22 (this act), is repealed and recreated to read:

23 49.343 (2) (a) By October 1 annually, a residential care center for children and
24 youth or a group home shall submit to the department the per client rate that it
25 proposes to charge for services provided in the next year and a child welfare agency

1 shall submit to the department the proposed per client administrative rate that it
2 proposes to charge for treatment foster care services provided in the next year. The
3 department shall provide forms and instructions for the submission of proposed
4 rates under this paragraph and a residential care center for children and youth,
5 group home, or child welfare agency that is required to submit a proposed rate under
6 this paragraph shall submit that proposed rate using those forms and instructions.

7 **SECTION 10.** 49.343 (2) (b) of the statutes is created to read:

8 49.343 (2) (b) The department shall review a proposed rate submitted under
9 par. (a) and audit the residential care center for children and youth, group home, or
10 child welfare agency submitting the proposed rate to determine whether the
11 proposed rate is appropriate to the level of services to be provided, the qualifications
12 of the residential care center for children and youth, group home, or child welfare
13 agency to provide those services, and the reasonable and necessary costs of providing
14 those services. In reviewing a proposed rate, the department shall consider all of the
15 following factors:

16 1. Changes in the consumer price index for all urban consumers, U.S. city
17 average, as determined by the U.S. department of labor, for the 12 months ending
18 on June 30 of the year in which the proposed rate is submitted.

19 2. Changes in the allowable costs of the residential care center for children and
20 youth, group home, or child welfare agency based on current actual cost data or
21 documented projections of costs.

22 3. Changes in program utilization that affect the per client rate or per client
23 administrative rate.

24 4. Changes in the department's expectations relating to service delivery.

1 5. Changes in service delivery proposed by the residential care center for
2 children and youth, group home, or child welfare agency and agreed to by the
3 department.

4 6. The loss of any source of revenue that had been used to pay expenses,
5 resulting in a lower per client rate or per client administrative rate for services.

6 7. Changes in any state or federal laws, rules, or regulations that result in any
7 change in the cost of providing services, including any changes in the minimum
8 wage, as defined in s. 49.141 (1) (g).

9 8. Competitive factors.

10 9. The availability of funding to pay for the services to be provided under the
11 proposed rate.

12 10. Any other factor relevant to the setting of a rate that the department may
13 determine by rule promulgated under sub. (4).

14 **SECTION 11.** 49.343 (2) (c) of the statutes is created to read:

15 49.343 (2) (c) If the department determines under par. (b) that a proposed rate
16 submitted under par. (a) is appropriate, the department shall approve the proposed
17 rate. If the department does not approve a proposed rate, the department shall
18 negotiate with the residential care center for children and youth, group home, or
19 child welfare agency to determine an agreed to rate. If after negotiations a rate is
20 not agreed to, the department and residential care center for children and youth,
21 group home, or child welfare agency shall engage in mediation under the rate
22 resolution procedure promulgated by rule under sub. (4) to arrive at an agreed to
23 rate. If after mediation a rate is not agreed to, the residential care center for children
24 and youth, group home, or child welfare agency may not provide the service for which
25 the rate was proposed.

1 **SECTION 12.** 49.343 (3) of the statutes is amended to read:

2 49.343 (3) AUDIT. The department may require an audit of any residential care
3 center for children and youth ~~or, group home, as described in sub. (1) or (1m), or child~~
4 welfare agency for the purpose of collecting federal funds.

5 **SECTION 13.** 49.343 (4) of the statutes is created to read:

6 49.343 (4) **RULES.** The department shall promulgate rules to implement this
7 section. Those rules shall include rules providing for all of the following:

8 (a) Standards for determining whether a proposed rate is appropriate to the
9 level of services to be provided, the qualifications of a residential care center for
10 children and youth, group home, or child welfare agency to provide those services,
11 and the reasonable and necessary costs of providing those services.

12 (b) Factors for the department to consider in reviewing a proposed rate.

13 (c) Procedures for reviewing proposed rates, including rate resolution
14 procedures for mediating an agreed to rate when negotiations fail to produce an
15 agreed to rate.

16 **SECTION 14.** 938.357 (4) (c) 1. of the statutes is amended to read:

17 938.357 (4) (c) 1. If a juvenile is placed in a Type 2 juvenile correctional facility
18 operated by a child welfare agency under par. (a) and it appears that a less restrictive
19 placement would be appropriate for the juvenile, the department, after consulting
20 with the child welfare agency that is operating the Type 2 juvenile correctional
21 facility, may place the juvenile in a less restrictive placement, and may return the
22 juvenile to the Type 2 juvenile correctional facility without a hearing under sub. (1)
23 (am) 2. ~~The child welfare agency shall establish a rate for each type of placement~~
24 shall be established by the department of children and families, in consultation with
25 the department, in the manner provided in s. 49.343.

1 **SECTION 15.** 938.357 (4) (c) 2. of the statutes is amended to read:

2 938.357 (4) (c) 2. If a juvenile is placed in a Type 2 residential care center for
3 children and youth under s. 938.34 (4d) and it appears that a less restrictive
4 placement would be appropriate for the juvenile, the child welfare agency operating
5 the Type 2 residential care center for children and youth shall notify the county
6 department that has supervision over the juvenile and, if the county department
7 agrees to a change in placement under this subdivision, the child welfare agency may
8 place the juvenile in a less restrictive placement. A child welfare agency may also,
9 with the agreement of the county department that has supervision over a juvenile
10 who is placed in a less restrictive placement under this subdivision, return the
11 juvenile to the Type 2 residential care center for children and youth without a
12 hearing under sub. (1) (am) 2. ~~The child welfare agency shall establish a rate for each~~
13 ~~type of placement shall be established by the department of children and families,~~
14 in consultation with the department, in the manner provided in s. 49.343.

15 **SECTION 9108. Nonstatutory provisions; Children and Families.**

16 (1) CHILD WELFARE PROVIDER RATE REGULATION.

17 (a) *Transition.* Notwithstanding section 49.343 (1g) and (1m) of the statutes,
18 as affected by this act, for services provided beginning on January 1, 2010, and
19 ending on December 31, 2010, a residential care center for children and youth, as
20 defined in section 49.343 (1d) (d) of the statutes, as created by this act, and a group
21 home, as defined in section 49.343 (1d) (c) of the statutes, as created by this act, shall
22 charge the same per client rate for its services as it charged for services provided on
23 December 31, 2009, and a child welfare agency, as defined in section 49.343 (1d) (b)
24 of the statutes, as created by this act, shall charge the same per client administrative
25 rate, as defined in section 49.343 (1d) (a) of the statutes, as created by this act, for

1 the administrative portion of its treatment foster care services as it charged for the
2 administrative portion of those services on December 31, 2009.

3 (b) *Rules.*

4 1. 'Permanent rules.' The department of children and families shall submit in
5 proposed form the rules required under section 49.343 (4) of the statutes, as created
6 by this act, to the legislative council staff under section 227.15 (1) of the statutes no
7 later than the first day of the 7th month beginning after the effective date of this
8 subdivision.

9 2. 'Emergency rules.' Using the procedure under section 227.24 of the statutes,
10 the department of children and families may promulgate the rules required under
11 section 49.343 (4) of the statutes, as created by this act, for the period before the
12 effective date of the rules submitted under subdivision 1., but not to exceed the period
13 authorized under section 227.24 (1) (c) and (2) of the statutes. Notwithstanding
14 section 227.24 (1) (a), (2) (b), and (3) of the statutes, the department is not required
15 to provide evidence that promulgating a rule under this subdivision as an emergency
16 rule is necessary for the preservation of the public peace, health, safety, or welfare
17 and is not required to provide a finding of emergency for a rule promulgated under
18 this subdivision.

19 **SECTION 9308. Initial applicability; Children and Families.**

20 (1) CHILD WELFARE PROVIDER RATE REGULATION.

21 (a) SECTION 9108 (1) (a) of this act first applies to a contract for the provision
22 of services that is in effect on December 31, 2009, and that contains provisions that
23 are inconsistent with that treatment on the day on which the contract expires or is
24 extended, modified, or renewed, whichever occurs first.

(b) The repeal and recreation of section 49.343 (1g) of the statutes first applies to a contract for the provision of services that is in effect on December 31, 2010, and that contains provisions that are inconsistent with that treatment on the day on which the contract expires or is extended, modified, or renewed, whichever occurs first.

SECTION 9408. Effective dates; Children and Families.

(1) CHILD WELFARE PROVIDER RATE REGULATION. The treatment of section 938.357 (4) (c) 1. and 2. of the statutes, the repeal of section 49.343 (1m) of the statutes, and the repeal and recreation of section 49.343 (1g) and (2) (a) of the statutes take effect on January 1, 2011.

(END)